

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b))
Table of Allotments,)
FM Broadcast Stations.)
(Chewelah, Washington))

MM Docket No. 97-65
RM-9002

NOTICE OF PROPOSED RULE MAKING

Adopted: February 7, 1997;

Released: February 14, 1997

Comment Date: April 7, 1997

Reply Comment Date: April 22, 1997

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by LifeTalk Broadcasting Association ("petitioner"), proposing the allotment of Channel 283C3 at Chewelah, Washington, and its reservation for noncommercial educational use. Petitioner states its intention to apply for the channel, if allotted.

2. In support of its proposal, petitioner states that Chewelah is an incorporated town located in Stevens County, Washington, and has a 1990 U.S. Census population of 1,945 persons. Petitioner further states that Chewelah meets the Commission's criteria for a "community" for allotment purposes. Petitioner asserts that the allotment is in the public interest since it would provide Chewelah with its first local aural transmission service. Petitioner further asserts that there are no channels on the reserved band that would not be precluded by the proximity of Station KHQ-TV, Channel 6, Spokane, Washington. Under the circumstances, petitioner avers that precedence permits the reservation of a channel on the commercial band for noncommercial use, citing Butte, Montana, 9 FCC Rcd 2180 (1994); Buhl, Montana, 9 FCC Rcd 2606 (1994); and Romney West Virginia, 11 FCC Rcd 12800 (1996).

3. Generally, noncommercial educational stations operate within the reserved portion of the FM band (Channels 201-220). However, exceptions have been made where channels in the noncommercial band are not available because of foreign allotments (Canadian or Mexican), or potential interference to operation on VHF Television Channel 6. Here, potential interference with Station KHQ-TV, Channel 6, Spokane, Washington, appears to justify the reservation of a channel in the nonreserved band (Channels 221-300) for noncommercial educational use.

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4. We believe the proposal warrants consideration since the proposed allotment of Channel *283C3 at Chewelah, Washington, and its reservation for noncommercial educational use, could provide the community with its first local aural transmission service. An engineering analysis has determined that Channel *283C3 can be allotted to Chewelah in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.9 kilometers (3.0 miles) north to avoid a short-spacing to the licensed site of Station KEEH(FM), Channel 284A, Spokane, Washington.¹ Since Chewelah is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested. We note that an alternate Class C3 channel is available in the event there are any expressions of interest for a commercial facility.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

| <u>City</u> | <u>Channel No.</u> | |
|----------------------|--------------------|-----------------|
| | <u>Present</u> | <u>Proposed</u> |
| Chewelah, Washington | --- | *283C3 |

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before April 7, 1997, and reply comments on or before April 22, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Donald E. Martin, P.C.
P.O. Box 19351
Washington, DC 20036
(Counsel for Petitioner)

¹The coordinates for Channel *283C3 at Chewelah are North Latitude 48-19-17 and West Longitude 117-44-35.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

MM Docket No. 97-65
RM-9002

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the

person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (~~See~~ Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.